

Internal Revenue Service

District
Director

Department of the Treasury

915 Second Ave., Seattle, Wash. 98174

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

JUL 02 1984

Default
SEP 05 1984
Jurley

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated under the non-profit corporation laws of the State of [REDACTED] on [REDACTED].

You describe your organization as a "foundation providing free testing and referrals to appropriate medical and educational facilities for individuals with problems relating to education and learning, and doing research into learning problems as indicated by information acquired through the free testing.

Your organization's goal is to find out whether a student has a problem in learning, what sort of problem he or she has, and what the reasons are for the learning problem. You give visual, auditory, and dyslexia tests. The psychometrist (tester) then refers the student to others to correct or alleviate the learning problem. The children (and adults) may be referred to "[REDACTED]", a for-profit organization owned by [REDACTED], who is the founder and Chairman of the board for the Foundation, an Optometrist, an Ophthalmologist, a psychologist, or other public and private programs such as, community college adult basic education courses, local special education programs, tutoring and [REDACTED].

The Foundation has been paying the psychometrists \$[REDACTED] per client for testing, correcting the test, and issuing a letter, and \$[REDACTED] per client for correcting and issuing a letter. The tests may be conducted at the psychometrist's home or elsewhere. The testers are coordinators for the [REDACTED] which operates a treatment program for those who have learning problems.

[REDACTED], an optometrist, quit his optometry business several years ago in order to devote full time to his [REDACTED]. [REDACTED]'s average treatment consists of about 4 months of one hour daily sessions. The average charge for the total treatment is about \$[REDACTED]. [REDACTED]'s testing is offered in [REDACTED] locations.

Page 2

As a result of its testing program, the Foundation has referred clients to [REDACTED], and to other programs as follows:

	[REDACTED]	[REDACTED]	[REDACTED]
Number of individuals tested by the Foundation	[REDACTED]	[REDACTED]	[REDACTED]
Referred to other programs	[REDACTED]	[REDACTED]	[REDACTED]
Referred to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Number of individuals enrolled at [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] clients not referred by Foundation	[REDACTED]	[REDACTED]	[REDACTED]

Section 501(c)(3) of the Code provides for the exemption of organizations which are organized and operated exclusively for religious, charitable, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-(c) of the Income Tax Regulations states: "the words "private shareholder or individuals" in section 501 refer to persons having a personal and private interest in the activities of the organization."

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization cannot be considered exempt unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If any organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3) of the Regulations provides that an organization is organized for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes under section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is not "organized exclusively" for one or more exempt purposes if its articles of incorporation expressly empower it to carry on, other than as an insubstantial part of its activities, activities which are not in furtherance of one or more such purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

In Revenue Ruling 76-286, 1976-1C.B. 154 a nonprofit organization was formed to generate community interest in the retention of classical music programs by a local for-profit radio station which had intended to cease broadcasting because of financial difficulty. The organization sought program sponsors, encouraged continuation of contracts by existing sponsors, urged the public to patronize the sponsors, solicited subscriptions to the station's program guide, and distributed materials promoting the classical music programs, all of which activities tended to increase the station's revenues. The Revenue Ruling states a nonprofit organization that preserves and maintains classical music programming is serving an educational purpose. However, in order for such an organization to qualify for exemption under section 501(c)(3) of the Code, it must serve a public rather than a private interest. Although an incidental private benefit will not destroy the qualification of an otherwise educational organization, where an organization is serving both public and private interests, the private benefits must be clearly incidental to the overriding public interest. A contrary finding will indicate that the organization is serving a private rather than a public interest and does not qualify for exemption under section 501(c)(3).

Your organization's situation is analogous to the situation in the aforementioned Revenue Ruling. By providing free testing to individuals with learning problems and referring them to appropriate public and private facilities for help, you are serving public interests. However, at the same time, the fact that almost all of the clients at your founder's [REDACTED] have been those referred to it by your testing and evaluation services shows that your founder's private interests have been served in more than an incidental way. Although as a result of testing, more students have been referred to facilities other than [REDACTED], your testing service constitutes a screening program or a conduit by which your founder's for-profit institute can secure students who are suitable for enrollment at the for-profit Institute. The psychometrist is a "coordinator" who is servicing both the Foundation and the Institute.

Since you are serving a private rather than a public interest to a substantial degree, you are not operated exclusively for one or more exempt purposes, as required by section 1.501(c)(3)-1(c)(1) of the regulations. Furthermore, your Articles of Incorporation do not meet the organizational test for charitable, educational, and scientific organizations which seek exemption under section 501(c)(3). However, even if the Articles of Incorporation were amended to correct the deficiencies, you would not qualify for exemption under Code section 501(c)(3) because you are conferring upon your founder substantial valuable economic benefit.

Accordingly, we have determined that you are not entitled to recognition of exemption from Federal income tax under section 501(c)(3) of the Code. You are required to file income tax returns on Form 1120.

[REDACTED]
Page 4

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

As provided by section 6104(c) of the Internal Revenue Code of 1954 and the applicable regulations, the appropriate State officials are being notified of our determination.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018
[REDACTED]

cc: [REDACTED]